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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**
12

13 JOHN MCGRAW,
14 Plaintiff,
15 vs.

PETITION FOR REMOVAL

16 CHARLES KIM, individually; LINDEN
HOSPITALITY, LLC; FIRST AMERICAN
17 TITLE INSURANCE COMPANY; LHP
RIVERHOUSE HOLDING, LLC; DOES I-
18 X, and ROE CORPORATIONS I-X,
inclusive,
19 Defendants.
20

21 Defendants CHARLES KIM and LINDEN HOSPITALITY, LLC ("Petitioners"), by and
22 through their counsel of record, the law firm of MURCHISON & CUMMING, LLP hereby submit
23 and respectfully show:

24 **I.**

25 Petitioners are Defendants Charles Kim and Linden Hospitality, LLC ("Linden").

26 **II.**

27 The above-entitled action was commenced in the Eighth Judicial District Court in Clark
28 County, Nevada, and is now pending in that court. Process was served on Petitioners on

1 August 6, 2022. True and Correct Copies of the Summonses are attached hereto as
2 **Exhibit A**. A true and correct copy of the Complaint is attached hereto as **Exhibit B**.

3 **III.**

4 This Petition is filed timely pursuant to 28 U.S.C. § 1446(b)(3).

5 **IV.**

6 This action is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C.
7 § 1332(a) and is one which may be removed to this Court by Petition, pursuant to 28 U.S.C. §
8 1441(a).

9 **V.**

10 Plaintiff John McGraw was at all relevant times a citizen of the State of Nevada. See
11 Complaint, Ex. B, at ¶ 1

12 **VI.**

13 Defendants are not citizens of the state of Nevada. Charles Kim is a citizen of the State
14 of California. See Declaration of Charles Kim, attached hereto as **Exhibit C**, ¶ 2. Linden is
15 organized in the State of California. *Id.* ¶ 3. Charles Kim, a citizen of the state of California, is
16 the sole member of Linden. *Id.*

17 Non-Petitioner defendant First American Title Insurance Company is incorporated in the
18 State of Nebraska with its principal place of business in California.

19 LHP Riverhouse Holding, LLP ("LHP Riverhouse") is organized in the state of Delaware.
20 *Id.* ¶ 4; see *also* Articles of Formation, attached hereto as **Exhibit A-1**. No operating
21 agreement or other agreement was ever created respecting the membership of LHP
22 Riverhouse. *Id.* An agreement was proposed that would make Linden and entity controlled
23 by McGraw members of LHP Riverhouse, but the parties never reached an agreement. *Id.*
24 Thus, the only possible members of LHP Riverhouse are Linden or Kim, both citizens of
25 California.

26 Defendants anticipate that McGraw will argue that either he or another entity that is a
27 citizen of the State of Nevada is a member of Riverhouse. Even if this premise is accepted as
28 true, removal is still appropriate because the inclusion of Riverhouse is a fraudulent joinder.

1 "Joinder of a non-diverse defendant is deemed fraudulent, and the defendant's presence in
2 the lawsuit if ignored for the purposes of determining diversity, '[i] the plaintiff fails to state a
3 cause of action against the resident defendant, and the failure is obvious according to the
4 settled rules of the state.'" *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001)
5 (quoting *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir.1987)).

6 Plaintiff initially filed a complaint on September 15, 2021 that named all of the
7 defendants except for LHP Riverhouse. Even without LHP Riverhouse, Plaintiff was able to
8 seek a preliminary injunction concerning the major issues in the action. On September 28,
9 2021, Defendants sought removal on the basis of diversity jurisdiction in case number 2:21-
10 cv-01792 [Dkt. 1]. Plaintiff voluntarily dismissed the action, and filed the present action.
11 Plaintiff's counsel stated "you should also be advised that the Complaint of September 29,
12 2021 sets forth additional allegations and includes additional LLC defendant whose members
13 reside in Nevada. As such, it is improper to remove this matter based upon diversity." See
14 Email dated October 11, 2021, attached hereto as **Exhibit D**.

15 The Complaint, however, does not make any allegations at all concerning the conduct
16 of LHP Riverhouse. LHP Riverhouse was never a fully formed entity, was not involved in the
17 actions alleged in the complaint, and there is no relief that can be awarded against LHP
18 Riverhouse. Accordingly, even if a citizen of Nevada is a member of LHP Riverhouse, LHP
19 Riverhouse must be ignored for the purposes of determining whether there is diversity
20 jurisdiction.

21 VII.

22 Plaintiff's complaint seeks general damages in excess of \$50,000.00 plus special
23 damages in excess of \$50,000.00. See Complaint, Ex. B., at 8:22-28. Further, the Complaint
24 alleges that "Plaintiff estimates that economic damages exceed \$2,200,000.00." *Id.* ¶ 17.
25 Plaintiff also alleges damage for loss of revenue, reputation, and earnings. *Id.* ¶ 16.

26 Therefore, Petitioners seek removal of the above-entitled action from the Eighth Judicial
27 District Court in and for Clark County, Nevada to this Court.

VIII.

A copy of the Petitioners Petition for Removal, seeking removal of the above-entitled action to the United States District Court, District of Nevada, together with a copy of the Summons and Complaint, was deposited with the Deputy Clerk in the County Clerk's Office for the Eighth Judicial District Court in and for Clark County, Nevada.

IX.

Copies of all pleadings and papers served upon Petitioner in the above-entitled action are filed herewith.

Petitioners seek removal of the above-entitled action from the Eighth Judicial District Court in and for Clark County, Nevada to this Court.

DATED: August 30, 2022

MURCHISON & CUMMING, LLP

By /s/ Tyler N. Ure

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PROOF OF SERVICE

Kim, Charles adv. McGraw, John

STATE OF NEVADA, COUNTY OF CLARK

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Clark, State of Nevada. My business address is 350 South Rampart Boulevard, Suite 320, Las Vegas, NV 89145.

On August 30, 2022, I served true copies of the following document(s) described as **PETITION FOR REMOVAL** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Murchison & Cumming's practice for collecting and processing correspondence for mailing. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one business day after the date of deposit for mailing in this declaration.

BY ELECTRONIC TRANSMISSION VIA CM/ECF: Pursuant to the E-Filing System of the United States District Court, District of Nevada, to the parties at the e-mail addresses on the Court's website.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 30, 2022, at Las Vegas, Nevada.

/s/ Nicole Garcia
Nicole Garcia

SERVICE LIST

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